

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 BANK OF NEW YORK MELLON,

11 Plaintiff,

v.

12 DEBORAH TOWNSEND,

13 Defendant.

CASE NO. C19-5678RBL

ORDER

14 THIS MATTER is before the Court on Plaintiff's Motion for Remand to Superior Court.

15 The matter was submitted for consideration without oral argument. The Court has reviewed the
16 record and files herein and is fully informed. For the reasons discussed below Plaintiff's motion
17 is **GRANTED**.

18 Federal courts have limited subject matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co.*
19 *of Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994). Removal statutes are to be
20 strictly construed against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
21 1992) (per curiam) (citing *Boggs v. Lewis*, 863 F.2d 662, 663 (9th Cir. 1988); *Takeda v.*
22 *Northwestern Nat'l Life Ins. Co.*, 765 F.2d 815, 818 (9th Cir. 1985)). There is a "strong

presumption" against removal jurisdiction, which "means that the defendant always has the burden of establishing that removal is proper." *Gaus, supra.* (citations omitted).

The removal was not proper and remand is necessary.

Defendants allege that the foreclosure complaint violates the 11 USCS 542(a) discharge injunction that resulted from Defendants Chapter 7 Bankruptcy discharge on January 13, 2010. However, as Plaintiff points out, Defendants' own Notice of Removal acknowledges that the underlying deed of trust remains enforceable after a bankruptcy discharge. Therefore, this claim is not based upon the 11 USC 524(a)(2) bar, but upon a state statute of limitations, RCW 4.16.040(1).

1. Plaintiff's Motion to Remand is GRANTED.

2. This case is **REMANDED** to the Pierce County Superior Court for all further proceedings (Pierce County Superior Court Cause No. 19-2-07409-0).

3. This matter is closed.

IT IS SO ORDERED.

Dated this 10th day of September, 2019.

Ronald B. Leighton